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THE
Legality of the Court
HELD BY
His Majesties
Ecclesiastical Commissioners,
D E F E N D E D.
Ri: Their Proceedings *Lewis*
NO ARGUMENT
Against the Taking Off
Penal Laws & Tests.

L O N D O N,

Printed, and are to be Sold by Richard Janeway,
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WHITE - HALL,

Febr. 25th. 1687.

Sunderland P.

T H E

Legality of the Court

Held by

His Majesties

Ecclesiastical Commissioners,

DEFENDED.

THE Manifest Design of our Churchmen's Out-cries against His *M*AJESTIES Ecclesiastical Commission, being to insinuate into the *Mobile*, That the *KING*, notwithstanding the solemn Promises he has made to the Church of *England*, intends nothing less than Her Ruin; I cannot forbear adding some Considerations to what the *Vindicator* of the Proceedings of His *M*AJESTY's Ecclesiastick Commissioners hath said on this Subject. And

B

thus

thus much I the rather do, because I find, that the *Last* thing they aim at, is the setting the Nation against the Taking off Penal Laws and Tests. But, that I may the more Successfully go through this Province, it will be necessary, that I examine what has been opposed to the *Legality* of the Court.

His *MAJESTY* has Promised to Protect the Church of *England*, as by Law established, and hitherto has done Nothing that interferes with this most Gracious Promise; for, it must be acknowledged, that a Correcting the Disobedient Members of a Church, is not a Destroying, but rather an using proper methods to preserve and secure it.

The Church of *England* is a Body-Politick, compact, and compounded of many, and almost infinite several, and yet well-agreeing Members, of which the *KING* is *Head*, instituted and furnished with plenary and entire Power, Prerogative, and Jurisdiction, to render Justice and Right to every part of this Body, of what Estate, Degree, and Calling soever he be.

The Exercise of this Power and Prerogative, according to the Ecclesiastick Laws of this
 Realm,

Realm, is the Great Engine, used for the Defence and Security of this Church. The Distribution of Justice, whether by encouraging those that do well, or punishing the Offenders, is the true way to support a Body Politick.

Thus much, I presume, all men of Sence will yield, from whence it is easily inferr'd, That on my Clearing the *Legality* of the Commission [for nothing has been (that I do know) objected against the Defence of its Proceedings] it must be moreover granted, that His Majesty has done the Church of *England* no harm.

My present Work then, is, to consider, What has been urged against the *Legality* of this Court ? The Author of a Letter to the Vindicator will have the Question to be, “ *Whether or no by the Laws of this Nation, as they*
 “ *now stand, the KING’s Ecclesiastical Jurisdiction,*
 “ *may be delegated to Commissioners ? Or, Whe-*
 “ *Ecclesiastical Commissioners derived their*
 “ *Authority from His Majesty, by vertue of*
 “ *the First Elizabeth only, and not upon the*
 “ *score of any Prerogative in the Crown,*
 “ *preceding to that Act, whereby our Kings*
 B 2 “ *might*

“ might appoint Commissioners in such Cases, *ad libitum*, is the single Question, upon which the Validity or Invalidity of the present Commission will turn ?

To this the Author answers, “ That it is not an Expression that might drop from my Lord Coke’s Pen, that will determine so weighty a point as this, especially it being a question that depends upon some knowledge of *Antiquity*, which my Lord Coke was very little acquainted with : Besides, he adds, That my Lord Coke never tells us, that our King’s, by vertue of their ancient Ecclesiastical Jurisdiction, could appoint any Commissioners.

After this, the Author goes on to let us know what the ancient Jurisdiction Ecclesiastical was, boldly affirming, that no Ecclesiastical Jurisdiction was anciently delegated to Commissioners ; For, saith he, “ Commissions are not such Arbitrary things as some mistaken Men do fondly imagine. And how plausibly soever it be said, *That what Power a Man has in himself, he may delegate unto another* ; Yet this difference must be admitted betwixt Persons Commissioned

“ nated by the KING in Matters of Go-
 “ vernment, and Persons authorized by pri-
 “ vate men, to act for them, and in their
 “ stead, viz. That private men may by Law
 “ do those things in Person, which they im-
 “ power others to do for them. But the
 “ KING Commissionates Persons to do
 “ what Himself cannot by Law do in
 “ Person.

This is the Substance of what our Author
 opposes to what the *Vindicator* had said of
 the *Legality* of this Court. And in my **Re-**
ply, no more is needful, than to shew,

1. That in the Sence of the Church's great
 Archbishop, the KING may do by Law
 those things in Person, which He impowers
 Commissioners to do for Him.

2. That before the 1 Eliz. the Kings of Eng-
 land, by the Common Law, might grant out
 Commissions.

3. That notwithstanding any thing contained in
 the 16 Car. 1. or 13 Car. 2. the KING
 may do so still.

4. That

4. That His Majesty may exercise this Prerogative in Matters Ecclesiastical, in a more ample manner than yet He has done ; and therefore seeing he doth not, it's manifest, That His Majesty designs no Hurt to the Church of England.

To the First, I will only insist on what is affirm'd by Archbishop Bancroft, the *Malleus Puritanorum*, the great Champion of our English Church, who was President of the Convocation called in the First year of K. James I. and stifiy insisted on the imposing the three Articles, and on a Depriving all that disobeyed. This Great man, the Church of England's Darling, expresses himself most fully in these Words, as Sir Edward Coke reports.

Lib. 12.
Mich.

5 Jac. Pro-
hibitions de
l'Roy.

“ Upon Sunday the 10th. of November, the
“ KING, (upon Complaint made to him
“ by Bancroft Archbishop of Canterbury, con-
“ cerning Prohibitions) was informed, That
“ when question was made of what Mat-
“ ters the Ecclesiastical Judges have cogni-
“ zance, either upon the Exposition of the
“ Statutes concerning Tythes, or any other
“ thing Ecclesiastical, or upon the Statute
“ of

“ of 1 *Eliz.* concerning the High Commissi-
 “ on, or in any other case, in which there
 “ is not exprefs Authority in Law, *the KING*
 “ *Himself may Decide it in His Royal Person,*
 “ *and that the Judges are but the Delegates of the*
 “ *KING*; and that the *KING* may take
 “ what Causes he please to determine, from
 “ the Determination of the Judges, and may
 “ determine them Himself. And the Arch-
 “ bishop said, It was clear in Divinity, that
 “ such Authority belongs to the *KING* by
 “ the Word of *GOD*.

Nothing can be more expressly opposite
 to what the Author of the Letter affirms :
 He saith, that *The KING cannot by Law do*
that in Person which He impowers others to do.
 But the Archbishop is positive, That the
KING can do it in Person, yea, that thus
 much is ratified by the Holy Scriptures, and
 therefore is out of the power of humane
 Laws to alter. If then there be any Truth
 in this Church-man's Divinity, there is no force
 in what the Author offers for Law. But,

Secondly, The thing I chiefly insist on,
 is this, That before the First of Elizabeth, the
Kings of England might grant out Commissions.

Coke Rep.
Lib. 5.

In *Caudries* Case, after great and long Deliberation and Consultation, the Judges resolved, “ That the Act of the First
“ year of the late Queen, concerning Ecclesiastical Jurisdiction, was not a Statute *Introductory* of a New Law, but *Declaratory* of the Old; which appeareth as
“ well by the Title of the said Act, *viz.*
“ *An Act restoring to the CROWN the Ancient Jurisdiction over the State Ecclesiastical and Spiritual, &c.* As also, by the Body
“ of the Act, in divers parts thereof. For
“ that Act doth not annex any Jurisdiction
“ to the CROWN, but that which in
“ truth, or of Right, ought to be by the
“ *Ancient* Laws of the Realm, parcel of
“ the KING’s Jurisdiction, and united to
“ his Imperial Crown, and which Lawfully
“ had been, or might be exercised within
“ the Realm.

Thus you see the Judges are clear in their Opinion, that the *First of Elizabeth* is not *Introductory* of a New Law, but *Declaratory* of the Old: And thus much in the General the *Author* of the Letter will grant

grant me, but then he will by no means yield, That our *KINGS*, by vertue of their Ancient, Inherent, and Primitive Ecclesiastical Jurisdiction, might *Delegate* to Commissioners the Exercise thereof: However, if we observe what was further resolved by these Judges, we shall find that 'twas thus :

“ If that Act of the First Year of our
 “ late Queen, had never been made, it was
 “ Resolved by *All* the Judges, that the
 “ King or Queen of *England*, for the time
 “ being, may make such an Ecclesiastical
 “ Commission, as is before mentioned, by
 “ the *Ancient Prerogative and Law of Eng-*
 “ *land.*

Thus you have the Resolution of all the Judges, against the Opinion of one unknown Gentleman, whether Lawyer, or no, is not clear ; but had he been (though he discovers no such thing) Learned in the Laws, I presume, his Opinion is not to be regarded, in a Matter wherein the Judges are so plainly against him. And,

C

though

though this be enough, yet *ex abundanti*, I will add one Resolution more of our Judges. “ *Mich. 4 Jacob. post Prandium*; “ There was moved a Question amongst the “ Judges and Serjeants at *Serjeants-Inn*, If “ the High Commissioners in Ecclesiastical “ Causes may, by Force of their Commis- “ sion, imprison any man, or no? First of “ all, it was resolved by *all*, that Before “ the Statute of 1 *Eliz. c. 1. The KING* “ *might have Granted a Commission to Hear and* “ *Determine Ecclesiastical Causes.*

To return to our Author, on this Question, Whether our KINGS, by vertue of their Ancient Ecclesiastical Jurisdiction, might Grant out Commissions, or Delegate the exercise of their Power to Commissioners? I say, on this Question (as this Gentleman grants) the Validity or Invalidity of the present Commission will turn: that is to say, If by the ancient Laws our KINGS might Grant out Commissions, then the present Commission is valid; But it has been Resolved by all the Judges again and again, that by the Ancient Law
before

before the First of *Elizabeth*, the KING might Grant out Commissions. *Ergo*, the present Commission is valid, the Court is a Legal Court.

Though this be so very clear, yet our Gentleman is still of the Opinion, That the Statute of 16 *Car.* 1. has taken away the Commission it self, Root and Branch. I will therefore proceed to the Third point, *viz.*

Thirdly, That notwithstanding any thing contained in the 16 *Car.* 1. or 13 *Car.* 2. the KING may still Grant out Commissions. For, if the Power of Granting this Commission be, as our Church = of = *England* = Lawyers declare, a part of the *Ancient Ecclesiastick Jurisdiction*, it is, notwithstanding any thing in the 16 *Car.* 1. or 13 *Car.* 2. still so. For it is expressly declared in this 13 *Car.* 2. c. 12. That Neither the said Act, nor any thing therein contained, DO TH, or Shall take away any Ordinary Power from the Archbishops, Bishops, &c. but that they, and every

C 2

Person

Person above-named, exercising Ecclesiastical Jurisdiction, may proceed, and execute all manner of Ecclesiastical Jurisdiction, belonging to the same before the making of the 16 Car. 1. And if we look back, and observe who those Persons are that are above-named, we shall find them to be not only Archbishops, and Bishops, but *Vicar-Generals*, or any other person or persons whatever, exercising Spiritual or Ecclesiastical Power by any Grant, Licence, or Commission of the KING's Majesty; and if the Ecclesiastical Power be restored to *Vicar-Generals*, and to the KING's Commissioners, then the Power *extraordinary* is restored too, for 'twas an Extraordinary Power that belonged to them, which can no sooner be yielded, but 'twill follow, that no more Power is taken from *Vicar-Generals*, and the KING's Commissioners, than what was taken from Archbishops, Bishops, &c. which is further confirmed by that Clause, in which it is Declared, That the KING's Supremacy in Ecclesiastick affairs shall not be abridged or diminished;

On

On which I thus argue : That that Sence of this Law, by which the KING's Ecclesiastick Supremacy is abridg'd or diminished, is not the true Church of *England* Sence. But the holding that all *extraordinary* Jurisdiction is taken away, abridges the KING's Supremacy ; For, as our Church-men will have it before this Statute was Enacted, it's most manifest, that the Power of making Vicar-Generals and Commissioners, for the exercise of Extraordinary Jurisdiction, and summoning Men out of their own Diocess, belong'd to the King's Supremacy Ecclesiastical, and therefore it still doth appertain to it, which cannot be satisfied by Commissioners of Delegates, and Commissioners to visit in places exempt ; For as I have already observed, *Vicar-Generals*, whose Jurisdiction is Extraordinary, are named amongst the rest. But to follow our Author,

If we enquire after the Special Reason that moved *Queen Elizabeth* to set up the *High-Commission Court*, we shall find, that though it was to the end she might De-
prive

prive the *Popish Priests*, yet, by the Instigation of the Clergy, it was, for many years together, turned against the Protestant Dissenters; and, according to Church-of-England-Law, it may as well be turned against themselves: For the Powers, Authorities, and Jurisdictions annexed to the Imperial CROWN of *England*, were for the Redressing, Ordering, Correcting, Restraining, and Amending any Offences, Contempts, and Enormities whatsoever, which by any manner of Spiritual Authority and Jurisdiction, ought to be reformed; and therefore, if a Church-of-England-man be guilty of any such Offences, Contempts, or Enormities, he falls under the Ecclesiastick Censure, as well as a *Roman Catholick*, or Protestant Dissenter; and for the same Reason, One Prince exercises this Authority against Offenders of one sort, another Prince may use the same Power, for the amending the Offenders of the other Denomination.

And, Who can consider how our Churchmen, that they might the more severely
handle

handle the Protestant Dissenter, have exalted the Prerogative, and not wonder that they should complain on the milder Exercises of it ? But whatever they may think, it's impossible for them to open their Mouths in this matter, unless they bring upon themselves the greatest *Odium* and Contempt imaginable; for when they blame the present Commissioners for what they have done against the Bishop of *London*, and *Magdalen* Colledge, they do condemn themselves for exercising the greatest Severities against the *Puritans*, contrary (as now they themselves will have it) unto all Law ; For from what has been already said, it is apparent, That the same Power His Majesty's Predecessors exercis'd, belongs unto His Majesty, and that gives Strength to each Horn of the *Dilemma*.

In a word, then our Churchmen must confess, they have been guilty of a very great error, in turning the Royal Thunder against the Old *Puritans*, in *Q. Elizabeth's* and *K. James the First's* days : Or, that they acted very Righteously in what they have

have done against them. If the *Former*, why do they not publish so much to the World ? Why do they not confess, that their Forefathers have sinned, and gone astray, and that the *Puritans* were most Unjustly persecuted by their beloved Mother ? If the *Latter*, if the Church of *England* in those days did but what was Just, seeing many Hundred of the *Puritans* were spoiled of their Benefices by the Royal Power, the *KING* may as Righteously proceed on the same bottom.

Fourthly, The *Fourth* thing to be done, is this, *viz.* That His MAJESTY may exercise His Prerogative in Matters Ecclesiastical, in a more ample manner than yet He has done.

The Author of the Letter affirms, That the Power of making Canons, for the Government of the Church, was no otherwise in the CROWN than the Power of making Temporal Laws ; But the mistake in this place is as great as some others he is fallen into, about *Appeals* and *Investitures* ; the first of which, notwithstanding what he

he saith to the contrary, is to the *KING* without a Parliament, and decided by his Delegates or Commissioners of Review; the Last by the *KING* solely, who, by the delivery of the Staff and Ring, did usually invest, as our Histories abundantly confirm. In like manner touching Laws about Rites and Ceremonies, it lies in the *KING*'s Power, without a Parliament, to make 'em. So saith Dr. *Zouch*, and

Dr. *Cosin*, and there is an Act of Parliament, expressly recognizing this Power to be in the *KING*; the Words of which are, **If there shall happen any Con-**

Rex possit novas Leges condere circa ceremonias & ritus cum consilio Metropolitani vel Commissariorum in Causis Ecclesiasticis. *Zouch. Descrip. Jur. Eccles. Par. 1. Sect. 3. Col. T. 6.*

tempt or Irreverence to be used in the Ceremonies or Rites of the Church — the Queen's Majesty, with the Advice of her Commissioners in Causes Ecclesiastical, or Metropolitan, may Ordain and Institute such further Ceremonies or Rites, as may be most for the Advancement of GOD's Glory, the

Edifying of His Church, and due Reverence of Christ's Holy Myste- ries and Sacraments.

1 Eliz.

C. 2.

And as the KING, with His Ecclesiastical Commissioners, may make New Laws about Ceremonies, so, without a Parliament, He may make Orders or Constitutions, for the Government of the Clergy, and deprive the Disobedient.

Thus much is affirm'd by those Protestant Divines, who have Written in Defence of the KING's Supremacy, particularly by Dr. Harris, in Answer to Becanus the Jesuit, where he is express in assuring us, " That the Right and Power by Regal Authority to make Church-Laws, as, that " G O D should not be Blasphemed; that G O D " should be pacified in a Fast; and Honoured in a " Festival day, and all such as we read to have " been made in the Code, Authenticks, and Capitulars by Constantine, Theodosius, Justinian, " and Carolus Magnus, belongs to our " Kings.

" More =

“ Moreover, to *Delegate* such as should
“ judge of the Laws so made,

“ *Touching Persons*

“ To administer Justice to all of all sorts—

“ To deprive the High-Priest (if he do de-
“ serve) of his Priesthood.

These by Divine Right, are the
Rights — of **Regal Primacy**,
viz. whereby the KING
may

1. *Be called the Supreme Head of
the Church.*

2. *Call Councils, and preside in them.*

3. *Make Laws Ecclesiastical.*

4. *Constitute, and Depose the
High-Priest.*

5. *Bind His Subjects, by Oath, to
Keep the Laws by Him made.*

“ To conclude, Hereby may the Adver-
 “ saries see that *Regal Primacy* is founded on
 “ the Scriptures, and propagated from the
 “ First Religious Kings under the Old, to the
 “ First Religious Emperors and Kings, and
 “ so to Our Sovereign Lord K. *JAMES*,
 “ under the *New Testament*, and in that
 “ long distance of time nothing impaired or
 “ diminished. So far Dr. *Harris*.

But before many Noble-men, Archbi-
 shops, and Bishops, and the Justices and
 Barons of the *Exchequer*, it was agreed,
 That the *KING*, without a Parliament,
 may make Constitutions for the Govern-
 ment of the Clergy, and that such a De-
 privation, *Ex Officio*, without a Libel, is
 good.

Besides, it must be further observ'd,
 That as it was held both by the Church-
 of

of *England* Divines, and Lawy^{ers}, to be in the Power of the *KING* to make Con-^{Noyes Re-}stitutions for the Government of the Clergy, ports, Fol. 100. and Deprive the Disobedient : In like manner our *KINGS* acted accordingly, and impos'd a Subscription to the Three following Articles.

“ I. That the *KING's* Majesty,
 “ under *G O D*, is the Only Supreme
 “ Governour of this Realm, and of
 “ all other His Highnesses Domini-
 “ ons and Countries, as well in all
 “ Spiritual or Ecclesiastical things or
 “ causes, as Temporal ; and that no
 “ Forreign Prince, Person, Prelate,
 “ State, or Potentate, have or ought
 “ to have any Jurisdiction, Power,
 “ Superiority, Preheminence, or Au-
 “ thority Ecclesiastical, or Spiritual,
 “ within His Majesties said Realms,
 “ Dominions and Countries.

II. That

“ II. That the *Book of Common-*
 “ *Prayer*, and of *Ordering of Bishops*,
 “ *Priests*, and *Deacons*, containeth in
 “ it nothing contrary to the Word
 “ of *G O D*, and that it may Lawful-
 “ ly be used, and That He Him-
 “ self will use the Form in the said
 “ Book, prescribed in publick Prayer;
 “ and none others.

“ III. That He alloweth the *Book*
 “ of *Articles of Religion*, agreed upon
 “ by the Archbishops, and Bishops
 “ of both Provinces, and the whole
 “ Clergy in the Convocation hol-
 “ den in *London*, in the Year of our
 “ Lord God, 1562. And that He
 “ acknowledgeth all and every the
 “ Articles therein contained, being in
 “ number Nine and Thirty, besides
 “ the *Ratification* to be agreeable to
 “ the Word of *G O D*. To

To these three Articles all Persons received into the Ministry; were bound to Subscribe in these Words;

I N. N. do willingly, and ex animo, Subscribe to these Three Articles above - mention'd, and to all things that are contained in them.

This Subscription was imposed by the Regal Authority, without a Parliament, and many Hundreds who could not Subscribe, were, to the Ruin of them and their Families, actually deprived. And although this Subscription was exacted, during the whole Reign of *James I.* and *Charles I.* yet until the Restauration of *Charles the 2d.* it had never a Parliamentary Establishment.

Seeing then, it's past doubt, That His *MAJESTY's* Supremacy is as ample as that of any of His Royal Predecessors, what *Q. Elizabeth* and *K. James the First* have done, that His present *MAJESTY* may now do, and without a Parliament, Command a Subscription to other New Articles, and Deprive the Disobedient.

To instance in one Article : His *MAJESTY* may Command all the Clergy throughout this Kingdom, to give in their *Assent*, and *Consent* to every thing contained in His late *Gracious Declaration of Indulgence*, and *Deprive* all that *Disobey*.

The power of Making new Articles, and requiring Subscription, His *MAJESTIES* Royal Predecessors have exercis'd, and the same His *MAJESTY* may as well now do. For the *Matter* of His *Majesties Declaration* has greater Countenance from Scripture, than the Ceremonies can pretend to. Ay, the very *Dispensing Power* it self, is no more than what many of our Clergy have, for many Years together, preached up for Sound Doctrin.

Thus you see how the *KING* may stretch His Prerogative to an higher Peg than yet he has done ; but, Would there not then be a Brave Work among our Clergy, who, on such an occasion, would be obliged to give in *Assent* and *Consent* to *Liberty of Conscience*, or submit to a *Deprivation*!

tion ! I will say it again, If His *MAJESTY* by His Regal Authority, should impose a Subscription to His late Gracious Declaration, He might most Righteously, according to Church - of - *England* - Law, Deprive all that refuse to Obey.

I know that of late, some have very confidently said, That *Deprivation* is no Ecclesiastical Penalty, for the Benefices of which they are Deprived, is a *Property*, and by *Magna Charta*, no one can be disseized of it, without a Tryal by a Jury of his Peers ; I will therefore, in short, give you the Resolution of our Judges in this matter, and leave it to the impartial Reader to judge, as he shall see cause.

“ Robert *Candrey*, the Parson of the
 “ Rectory of *North - Luffenham*, in the County
 “ of *Rutland*, was, by the Queens Ecclesia-
 “ stical Commissioners, deprived of his said
 “ Benefice, for preaching against the Book of
 “ Common Prayer, as also for that he re-
 “ fused to Celebrate Divine Service, accor-
 “ ding to the said Book ; which said Sen-
 E tence

" tence of Deprivation was given by the
 " Bishop of London *cum assensu A. B. C. D. &c.*
 " *collegiarum suorum.* But whether the Depri-
 " vation was void in Law, was solemnly
 " and oft-times debated at Bar by Council,
 " and at the Bench by the Judges, and after
 " great and long deliberation and consultati-
 " on had with the rest of the Judges, the
 " Case was in the Term of *St. Hilary*, in the
 " 37 Year of the Queen, adjudged. It was
 " argued by *Cawdrey's* Counsel, That the De-
 " privation was void, for his Offence was
 " against the First of *Elizabeth*, and therefore
 " ought to be punished according to the mo-
 " deration of that Act, which was not for
 " the First Offence an *ipso facto* Deprivation,
 " but only the Loss of the profits of his Ec-
 " clestialtical Livings for One year, and Six
 " months Imprisonment. But Deprivation
 " was for a Second Offence, committed after
 " he had been judicially convicted of Re-
 " cord by Verdict of Twelve men, or by
 " Confession, or notorious evidence of the
 " Fact. But although this was the method
 " prescribed by the Statute of 1 *Elizabeth*,
 " yet, because there was a *Proviso* in the
 " said

" said Act, [That all and singular
 " Archbishops and Bishops, and eve-
 " ry of their Chancellors, Commis-
 " saries, Archdeacons, and other Ordi-
 " naries having any peculiar Eccle-
 " siastical Jurisdiction, should have
 " full Power and Authority, by ver-
 " tue of that Act as well to enquire
 " in their Visitation, &c. — of all
 " and every the things above-men-
 " tioned, done and committed, or per-
 " petrated within the limits of their
 " Jurisdiction and Authority, and
 " punish the same by Admonition, Ex-
 " communication, Sequestration, or Depriva-
 " tion, and other Censures and Pro-
 " cesses, in like Form as heretofore
 " had been used in like cases by the
 " Queens Ecclesiastical Laws,] It
 " was adjudged, That the Ecclesiastical
 " Judges might Deprive such Person, Vicar, &c.
 " as shall deprave or not observe the said
 " Book, as well for the First Offence, as
 " he might have done by the Censures of
 " the Church, and the Ecclesiastick Laws,
 " as if no form of punishment had been in-

“ inflicted by that Act, and are not bound
 “ to pursue the Form prescribed by the said
 “ Act, which is to punish the Offender, according
 “ ding to the Temporal Law.

Thus the Judges have Resolv'd it, That
 Deprivation is one sort of Ecclesiastical punishment, and may be inflicted without an Observing the Form prescribed by the Temporal Laws : Which is enough to silence the Clamours of those Church-men, who now cry up Benefices to be such a Property, that the punishment by Deprivation cannot be justly inflicted, unless the process be in like Form as is used by the Temporal Laws.

Furthermore, as His Majesty may exercise this ample Power, and not recede the least from Church-of-England-Law ; even so, his Doing it would not interfere with his Promise : And, if we may judge of things by the Sentiments our Church-men have heretofore had of Deprivations, no hurt is hereby done unto their Church. For when the old Puritans, in *Q. Elizabeths* and *James the First's*

First's days, and the *Nonconformists* in Charles the Second's Reign, were Deprived, these Deprivations were esteemed by the Governing Clergy, no Damage, but a great Advantage to the Church; for, by them She was delivered from all those that differ'd from Her in a Ceremony. On the other hand therefore, if His Majesty should impose Subscription to the Late Declaration, though many be thereupon Deprived, yet no more harm can be done the Church of England now than by the former Deprivations. And if the Opinion of a very Learned and Moderate Church-man may be of any value, the Difference between these and the Old Deprivations, must be only this: By the Old, the most Pious, Learned, and Peaceable, that scrupled the Ceremonies, were turn'd out, to the prejudice of Religion; But by this New one, none but the Debauched, and Persecuting part of the Clergy, to whom we may impute all our Late Miseries, will be laid aside, to the advancing the Nations Peace.

If then the KING may exercise his Prerogative, and go so far, as is here said,
with

without doing any hurt to the Church, What ground is there for the present *Noise*? His *MAJESTY*'s Commissioners have indeed suspended One Bishop for his Disobedience, towards whom they have exercised the greatest patience, in not proceeding to a Deprivation; And what have they done more, than amove the Fellows of one Colledge for their insolent oppugning His Majesties Supremacy, and a making 'em incapable of compassing their bad designs? Where then is the least Colour for the Jealousies these men endeavour to beget in the minds of His Majesties Subjects?

On the whole, Whoever will consider how much, according to Church-of-England-Law, the KING may do, and yet notwithstanding the many Provocations some Hot-Church-men have given Him, How little He has done? I say, whoever will carefully observe thus much, will see cause enough to conclude, That *His Majesty's* Clemency in the Exercise of His Supremacy, bears proportion to His Greatness.

It's amazing to observe, how industriously some of our Clergy, and their Creatures, struggle ; how strenuously they labour to misrepresent *His Majesty's* most Glorious Designs, how many Seditious Pamphlets they do daily emit, and at what charges they are to propagate 'em. But yet *His Majesty*, with the greatest steadiness pursues His Royal Purposes of Grace to the whole Kingdom, to all Parties in it, even to the Church of *England*, that She continue in the Enjoyment of all that is dear unto Her, so far as it's consistent with the true peace and quiet of the other great parts of the Nation.

Let things be restored to the Ancient Constitution, let all English-men, as such, enjoy the *Priviledges* that belong unto 'em : Let them all sit down with peace under their own Vines, and be equally concern'd in the Services the Government calls for, and Encouragements it gives, and *His Majesty* is satisfied.

The enclosing the Government, and narrowing it so, that none but Men of one
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Religious Perswasion can have a share in it, hath (as woful experience teaches us) proved fatal to this Nation. It hath spoiled our Trade, depopulated the Kingdom, and exhausted the Nation's Treasure, carrying it unto a neighbouring People.

Let us then be content, that *His Majesty* brake down the *Enclosures*, and set the Government on a larger bottom, that all *True English-men* may have a share in it. Let Liberty and Property, and every man's Religion, be secured, and we shall soon be the happiest People under Heaven.

I say, Let every man's Religion be secured, as much from Violence, as the most Sacred part of our Civil Liberties; for this is the thing His *MAJESTY* Desires; and, Where then is our danger?

His *MAJESTY* offers to do what never any of His Royal Predecessors ever did before him, towards the establishing his *Peoples Peace*, And shall we be so unsensible, as not to Bless GOD, and accept of the Offer?

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Here is no *Trusting* in the Case. His *MAJESTY* discovers so much Sincerity and Integrity in what he saith, that he will leave no room for *Trust*.

It is but to accept of a *Magna Charta*, in which our Religion is secured from all danger, (*which can never be so long as Penal Laws, and those Tests, whose matter is meerly Religious, be kept up,*) and we are immediately possess of all we can reasonably desire.

Let the same Instrument that takes away *Penal Laws* and *Tests*, secure our Religion, and by the very Breath, that the one is destroyed, the other will be established.

That a Sufficient Security may be found out, is not doubted by the most wise and thoughtful. What that is, is the part of a *Parliament* to consider; but if we have as good, or better Security for our Religion; to be content to part with *Penal Laws* and *Tests*, is both the Duty and Interest of every true *Englishman*.

That *His Majesty* will give us as good Security as can be reasonably desired, is the Import of His Late *Gracious Declaration*, which, he has, on divers occasions, oft publicly repeated, and it hath been fully proved, That *His Majesty's Ecclesiastical Commissioners* have done nothing that is inconsistent with It. Whence it clearly follows, That there is nothing of Argument in our *Hot-Churchmens* Clamours, about this Courts Proceedings against the Taking off Penal Laws and Tests.

In a word, from what has been already urg'd, it's most apparent :

I. That the Court, held by His *Majesties* Ecclesiastical Commissioners, is, according to the Sentiments of Church - of - England - Lawyers and Divines, a *Legal Court*.

II. That the Prerogative, recognized by the Church-of-England to be inherent in the CROWN, is much larger than what *His Majesty* has yet exercised. For,

1. The

1. The KING with His Commissioners Ecclesiastical may make *New Laws* about Ceremonies; and instead of Three, impose Thirty more. The Power being lodg'd in the KING, He is the most proper Judge of their *Decency*, and *Number*; and for the same Reason, that Three are imposed, if His *Majesty* judges it meet, Thirty more may be added to the present Imposition.

2. The KING with His Commissioners Ecclesiastical, may enjoyn a strict Subscription unto *New Articles*, and in the present juncture, require the Clergy to give in Assent, and Consent unto them, on Pain of Deprivation. And if His *Majesty* should oblige our hot Church-Doctors to Subscribe, Assent, and Consent unto *Liberty of Conscience*, What a condition would these Violent Men be plung'd into? They must either renounce their persecuting Principles, or part with what is as dear unto them, *viz.* their Benefices.

3. His Majesty may proceed against the Bishop of London to a Deprivation; for, when ever any one falls under Suspension, it has been the Custome of the Church of England, stilly to insist on a Submission; and where that could not be obtained, they never stopt one point this side a *Deprivation*. Now it's plain, that it was the Bishop's Duty to obey the Mandate of his Supreme Ordinary, and suspend Dr. Sharp; and seeing he refused to Discharge his Duty, he was by their own Laws, justly suspended; and it's as certain, that His Majesty exercises the greatest Clemency, in waiting so long for his submission.
4. If His Majesty should deal with some of the *Magdalen-Fellows* after that manner, the Church - of - England - Judges advis'd King James the First, to proceed against the Old *Puritanes*, He might handle 'em more severely than yet his Commissioners have done. For their endeavouring to fill the Minds of His Majesties Subjects with *Discontents*, and *Jealousies*, is

an Offence, Fineable at discretion, and very short of Felony, or Treason in the Punishment.

By all which it's manifest, that His *Majesty* has not stretched his Prerogative to the utmost length he might, and yet keep within the Church - of - *England* Circle, and it's also as clear, that by reason of this Power His *Majesty* has all the Conformable Clergy under His Girdle; to which we may add, that on the account of the many Penal Laws against Protestant Dissenters, *They* also are as much under the Power of their *PRINCE*; for which reason, we may be assured, that if His *Majesty* design'd any thing more than the Peace and Quiet of all His People, if he had further resolv'd to have set up *Papery* in Dominion, to the Ruining His Protestant Subjects, the only time of doing it would be before the Penal Laws and Tests are taken off, and a *Magna Charta*, for Liberty of Conscience is Established. For *Now*, the *KING* can either *Muzzle* all the Clergy, or Ty up the hands of Protestant-Dissenters, and get a Parliament, that shall set up *Papery*.

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It's not to be doubted, but that 'tis more easy *Now*, than it can be after a *Magna Charta* for Liberty of Conscience is obtained; for *Then*, the persecuting principle will be Damned, the Church of *England* will have fresh security for her standing, and the *Protestant-Dissenter* be deliver'd from the Awe, and Dread of Penal Laws. And every Man, whose desire is more for Peace, than Broyles and Confusions (be they *Protestant* or *Roman Catholick*) they will be for a continuing the *Magna Charta*.

To deliver freely my Conscience in this case, it is this: His *Majesty* designs to make us happy, by setting us all at ease under His Government; and the utmost he desires, is, That the *Roman Catholicks* with His other Subjects, may enjoy the Free Exercise of their Religion, and have an equal share with others in the priviledges of *Englishmen* : and that thus much may be compassed, the *King* would have Matters so settled, that it may never be in the power of any one Party to hurt the Religion of the other, and that all Parties may be secured from Fears and Jealousies,

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His *Majesty* calls for the help of a *Parliament*, that in a *Parliamentary*-way, Men of every Religion, may have the greatest security the Wit of Man can invent for Liberty of Conscience.

All those Pamphlets therefore , that are daily spread abroad, chiefly by those, who had the greatest hand in the late *Persecution*, do hinder the Nations Peace, so far, as they obstruct this His *Majesties* most Gracious Design, and are to be consider'd as such, by all good Men, who, when they weigh things, will, I doubt not, see cause to do their utmost, that We may have such a *Parliament*, as will concurr with His *Majesty* in making us Happy.

FINIS.

the right of the people to a free press
and a free assembly of the people
and the right of the people to a free
election of their representatives in
Congress.

All of these things are the
right of the people, and they
are the right of the people in the
last resort. It is the right of the
people to elect their representatives
in Congress, and it is the right of
the people to elect their representatives
in the State Legislatures. It is the
right of the people to elect their
representatives in the local
governments, and it is the right of
the people to elect their representatives
in the courts. It is the right of
the people to elect their representatives
in the executive branch of the
government, and it is the right of
the people to elect their representatives
in the judicial branch of the
government.

W. M. S.



